

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MANHATTAN COLLEGE,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Nos. 18-1113

**PETITIONER MANHATTAN COLLEGE’S PRELIMINARY STATEMENT
OF THE ISSUES TO BE RAISED**

Pursuant to this Court’s May 2, 2018 Order, Petitioner Manhattan College (“Manhattan College”) submits its preliminary, non-binding statement of the issues it expects to raise in support of its petition for review. Manhattan College seeks review of the National Labor Relations Board’s (“NLRB” or “Board”) assertion of jurisdiction and certification under the National Labor Relations Act (the “Act”) of the Manhattan College Adjunct Faculty Union, New York State United Teachers (“NYSUT”), NEA/AFL-CIO (the “Union”) as the collective bargaining representative of a unit of adjunct faculty teaching at Manhattan College. The stated issues arise from both the final Decision and Order of the Board in Case No. 02-CA-201623 (April 27, 2018) and from the Board’s Decision on Review and Order in the underlying representation Case No. 02-RC-023543 (April 20, 2017).

Petitioner Manhattan College states that it expects to raise the following issues:

1. Whether the Board's assertion of jurisdiction pursuant to the National Labor Relations Act over a unit of faculty teaching at Manhattan College, a religious-affiliated university, contravenes the Act and binding Supreme Court and D.C. Circuit precedent restricting the scope of the Board's jurisdiction over religious-affiliated universities.

2. Whether the National Labor Relations Board's test—announced by a divided Board in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), and applied by the Board in this case—for determining the scope of its jurisdiction over religious-affiliated universities violates the Constitution or the principles articulated by the Supreme Court in *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979) and interpreted in subsequent cases, including *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002), and *Carroll College, Inc. v. NLRB*, 558 F.3d 568 (D.C. Cir. 2009).

3. Whether the Board's assertion of jurisdiction pursuant to the test articulated by the Board in *Pacific Lutheran University*, 361 NLRB No. 157 (2014), is unsupported by substantial evidence on the record considered as a whole, and whether the Board acted arbitrarily or otherwise erred in applying the law to the facts of the case.

4. Whether the Board's assertion of jurisdiction over a unit of faculty teaching at Manhattan College violates the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

Respectfully submitted,

/s/ Stanley J. Brown

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Dated: June 1, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2018, I filed the foregoing Petitioner Manhattan College's Statement of the Issues to be Raised through the Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Stanley J. Brown

Stanley J. Brown